IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF OHIO EASTERN DIVISION

Patrick Woodruff, :

Plaintiff, :

v. : Case No. 2:11-cv-61

: JUDGE JAMES L. GRAHAM

Commissioner of Social Security, Magistrate Judge Kemp

Defendant. :

ORDER

This is a Social Security disability case. On November 9, 2011, the Magistrate Judge filed a Report and Recommendation recommending that the case be remanded to the Commissioner for further proceedings pursuant to 42 U.S.C. §405(g), sentence four. No objections were filed. On December 8, 2011, the Court adopted the recommendation and remanded the case. Plaintiff then timely moved for an award of attorneys' fees pursuant to the Equal Access to Justice Act, 28 U.S.C. §2412.

The Commissioner has filed a responsive memorandum stating that the Commissioner does not object to an award of fees in the amount of \$1,875.00, the sum requested in plaintiff's motion. However, the Commissioner correctly points out that, under Astrue v. Ratliff, 130 S.Ct. 2521 (2010), the plaintiff and not the plaintiff's attorney is the party to whom §2412 grants the right to recover fees. The award must therefore be made to the plaintiff, notwithstanding the fact that plaintiff may have executed an assignment of that award in advance of any award having been made. See Renneker v. Astrue, 2012 WL 12696, *2 (S.D. Ohio January 4, 2012)(Beckwith, J.)(noting that "the Supreme Court very clearly held that EAJA awards are payable to the prevailing party, and not to that party's attorney" and concluding that "assignment of an EAJA award executed in advance

of any actual award, violates the Anti-Assignment Act, 31 U.S.C. § 3272" and that to make an award directly to the attorney before the Commissioner determines whether the plaintiff owes a pre-existing debt to the United States against which the EAJA fee award could be offset "would jeopardize the ability of the United States to collect such debts, if any exist"); accord Steele-Malocu v. Astrue, 2011 WL 1743457 (S.D. Ohio May 6, 2011)(Black, J.).

For these reasons, plaintiff's motion for attorneys' fees pursuant to the Equal Access to Justice Act (#24) is **GRANTED**. Plaintiff is awarded the sum of \$1,875.00 as fees under that Act. The award shall be payable to the plaintiff unless, as the Commissioner represents in his memorandum, the Social Security Administration can verify that plaintiff owes no pre-existing debt subject to offset and agrees to make payment directly to plaintiff's attorney.

IT IS SO ORDERED.

Date: January 26, 2012

s/James L. Graham
James L. Graham

United States District Judge